
Rules of
Department of Natural Resources
Division 25—Hazardous Waste Management Commission
Chapter 8—Public Participation and General
Procedural Requirements

Title	Page
10 CSR 25-8.010 Public Participation and General Procedural Requirements (Rescinded January 30, 1999)	3
10 CSR 25-8.124 Procedures for Decision Making.....	3

**Title 10—DEPARTMENT OF
NATURAL RESOURCES**

**Division 25—Hazardous Waste
Management Commission**

**Chapter 8—Public Participation and
General Procedural Requirements**

**10 CSR 25-8.010 Public Participation and
General Procedural Requirements**
(Rescinded January 30, 1999)

AUTHORITY: sections 260.370, RSMo Supp. 1988 and 260.400, 260.405 and 260.437, RSMo 1986. Original rule filed March 13, 1979, effective Jan. 1, 1980. Rescinded and readopted: Filed April 14, 1982, effective Oct. 11, 1982. Rescinded and readopted: Filed Dec. 13, 1983, effective June 18, 1984. Amended: Filed Dec. 16, 1985, effective Oct. 1, 1986. Amended: Filed Dec. 1, 1987, effective Aug. 12, 1988. Amended: Filed Feb. 16, 1990, effective Dec. 31, 1990. Amended: Filed Jan. 15, 1991, effective Aug. 1, 1991. Rescinded and readopted: Filed Sept. 4, 1991, effective Feb. 6, 1992. Amended: Filed June 3, 1993, effective Jan. 31, 1994. Rescinded: Filed June 1, 1998, effective Jan. 30, 1999.

**10 CSR 25-8.124 Procedures for Decision
Making**

PURPOSE: This rule reflects the requirements of the federal regulations in 40 CFR part 124 as amended by changes published in the Federal Register on December 11, 1995 (60 FR 63417), with modifications and additional requirements established by the Revised Statutes of Missouri. This rule establishes the requirements for public notice and public participation in the issuance, modification and revocation of hazardous waste management facility permits and resource recovery facility certifications, and the issuance and revocation of transporter licenses. This rule also specifies procedures for public participation in appeal hearings, variance petitions and closure activities.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of Secretary of State at a cost not to exceed

actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that Missouri requirements analogous to a particular lettered subpart in 40 CFR part 124 are set forth in the corresponding lettered subsection of section (1) of this rule. For example, the general program requirements in 40 CFR part 124 subpart A, with Missouri modifications, are found in subsection (1)(A) of this rule.)

(A) This subsection sets forth requirements which correspond to those requirements in 40 CFR 124 subpart A.

1. Purpose and scope. This subsection contains procedures for the review, issuance, class 3 modification, total modification, or revocation of all permits issued pursuant to sections 260.350 through 260.434, RSMo. Interim status is not a permit and is covered by specific provisions in 10 CSR 25-7.265 and 10 CSR 25-7.270. Class 1 or class 2 modifications, as defined in 40 CFR 270.41 or 40 CFR 270.43 as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this subsection.

2. Definitions. In addition to the definitions given in 40 CFR 270.2 and 271.2, as incorporated in 10 CSR 25-7.270, the definitions below apply to this rule:

A. "Application" means the Environmental Protection Agency (EPA) standard national forms and the Missouri Hazardous Waste Management Facility Application Form for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in Missouri, including any approved modifications or revisions. It also includes the information required by the department under 40 CFR 270.14 through 270.29, as incorporated into 10 CSR 25-7.270;

B. "Draft permit" means a document prepared under paragraph (1)(A)6. of this rule indicating the department's tentative decision to issue, modify in whole or in part, or reissue a "permit." A denial of a request for modification, total modification or revocation, as discussed in paragraph (1)(A)5. of this rule, is not a "draft permit" and is not appealable to the commission;

C. "Formal hearing" means any contested case held under section 260.400, RSMo;

D. "Public hearing" means any hearing on a preliminary decision at which any member of the public is invited to give oral or written comments;

E. "Revocation" means the termination of a permit;

F. "Schedule of compliance" means a schedule of remedial measures in a final permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with sections 260.350 through 260.434, RSMo;

G. "Total modification" means the revocation and reissuance of a permit;

H. "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity; and

I. "Variance" means any variation from the Missouri Hazardous Waste Management Law as defined in section 260.405, RSMo.

3. Application for a permit.

A. Any person who requires a permit shall complete, sign, and submit to the department an application for each permit required under 40 CFR 270.1 as incorporated in 10 CSR 25-7.270. Applications are not required for permits by rule per 40 CFR 270.60, as incorporated in 10 CSR 25-7.270. The department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications shall comply with the signature and certification requirements of 40 CFR 270.11, as incorporated in 10 CSR 25-7.270.

B. The department shall review for completeness every application for a permit. Each application for a permit submitted should be reviewed for completeness by the department within forty-five (45) days of its receipt. Upon completing the review, the department will notify the applicant in writing whether the application is complete. If the application is incomplete, the department will list the information necessary to make the application complete. When the application is for an existing facility, the department will specify in the notice of deficiency a date for submitting the necessary information. The department will notify the applicant that the application is complete upon receiving the required information. After the application is completed, the department may request additional information from an applicant, but only as necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

C. If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied, and enforcement actions may be taken under the applicable statutory provisions of sections 260.350 through 260.434, RSMo.

D. The effective date of an application is the date the department notifies the applicant that the application is complete, as provided in subparagraph (1)(A)3.B. of this rule.

E. For each application the department will, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the department intends to:

- (I) Prepare a draft permit;
- (II) Give public notice;
- (III) Complete the public comment period, including any public hearing; and
- (IV) Issue a final permit.

4. *Reserved.*

5. Modification, total modification, or revocation of permits.

A. Permits may be modified in part or in total, or revoked, either at the request of the permittee or of any interested person or upon the department's initiative. However, permits may only be modified or revoked for the reasons specified in 40 CFR 270.41 or 40 CFR 270.43, as incorporated in 10 CSR 25-7.270. All requests shall be in writing and shall contain facts and reasons supporting the request.

B. If the department decides the request is not justified, a brief written response giving a reason for the decision shall be sent to the person requesting the modification. Denial of a request for revocation, modification or total modification is not appealable to the commission.

C. Tentative decision to modify.

(I) If the department tentatively decides to modify a permit in total or in part, a draft permit will be prepared according to paragraph (1)(A)6. of this rule incorporating the proposed changes. The department may request additional information and, in the case of a permit modification, may require the submission of an updated application. In the case of a total modification, the department will require the submission of a new application.

(II) In a permit modification under this paragraph, only those conditions to be modified shall be reopened when a draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is totally modified under this section, the entire permit is reopened just as if the permit

had expired and was being reissued. During any total modification, the permittee shall comply with all conditions of the existing permit until a new, final permit is reissued.

(III) "Class 1 and 2 modifications" as defined in 40 CFR 270.42(a) and (b), as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this section.

D. If the department tentatively decides to revoke a permit, the department will issue a notice and follow the requirements of paragraph (1)(A)15. of this rule.

6. Draft permits.

A. Once the technical review of an application is completed, the department shall tentatively decide whether to prepare a draft permit, or to deny the application.

B. If the department decides to deny the permit application, a notice of denial shall be issued. A notice of denial is subject to the same procedures as any final permit decision prepared under paragraph (1)(A)15. of this rule.

C. If the department decides to prepare a draft permit, the department will prepare a draft permit that contains the following information:

(I) All conditions under 40 CFR 270.30 and 270.32, as incorporated in 10 CSR 25-7.270;

(II) All compliance schedules under 40 CFR 270.33, as incorporated in 10 CSR 25-7.270;

(III) All monitoring requirements under 40 CFR 270.31, as incorporated in 10 CSR 25-7.270; and

(IV) Standards for treatment, storage, and/or disposal and other permit conditions under 40 CFR 270.30, as incorporated in 10 CSR 25-7.270.

D. All draft permits prepared under this paragraph will be accompanied by a fact sheet per paragraph (1)(A)8. of this rule, and made available for public comment per paragraph (1)(A)10. of this rule, issue a final decision per paragraph (1)(A)15. of this rule and respond to comments per paragraph (1)(A)17. of this rule. An appeal may be filed under section 260.395.11, and Chapter 536, RSMo and section (2) of this rule.

7. *Reserved.*

8. Fact sheet.

A. A fact sheet will be prepared for every draft permit. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The department will send this fact sheet to the applicant and to any person who requests a copy.

B. The fact sheet shall include, when applicable:

(I) A brief description of the type of facility or activity which is the subject of the draft permit;

(II) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(III) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(IV) A description of the procedures for reaching a final decision on the draft permit including:

(a) The beginning and ending dates of the comment period under paragraph (1)(A)10. of this rule and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision; and

(V) Name and telephone number of a person to contact for additional information.

9. *Reserved.*

10. Public notice of permit actions and public comment period.

A. Scope.

(I) The department will give public notice that a draft permit has been prepared.

(II) No public notice is required when a request for permit modification, total modification, or revocation is denied. Written notice of that denial will be given to the requester and to the permittee.

B. Timing.

(I) Public notice of the preparation of a draft permit required under subparagraph (1)(A)10.A. of this rule will allow at least forty-five (45) days for public comment.

(II) Public notice of a public hearing will be given at least thirty (30) days before the hearing.

C. Methods. Public notice of a draft permit or intent to deny described in subparagraph (1)(A)10.A. of this rule will be given by the following methods:

(I) By mailing a copy of a notice to the following persons:

(a) The applicant;

(b) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, natural resource management plans, state historic preservation officers, including any affected states (Indian tribes); and

(c) Persons on a mailing list maintained by the facility which is developed by:

I. Including those who request in writing to be on the list;

II. Soliciting persons for “area lists” from participants in past permit proceedings in that area; and

III. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The facility shall be responsible for maintaining and updating the mailing list. The department may require the facility to update the mailing list from time-to-time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request;

IV. Including all record owners of real property adjacent to the facility;

V. Including, for a post-closure disposal facility, all record owners of real property which overlie any known plume of contamination originating from the facility; and

VI. Including, for an operating disposal facility, all record owners of real property located within one (1) mile of the outer boundaries of the proposed facility;

(d) A copy of the notice shall also be sent to any unit of local government having jurisdiction over the area where the facility is proposed;

(e) The department will mail a copy of the legal notice, fact sheet and draft permit to the location where the permit application was placed for public review under subpart (1)(B)2.B.(II)(d) of this rule;

(II) Other publication.

(a) Publication of a legal notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(b) For any active land disposal facility permit, a news release to the media serving the area where the facility is located; and

(III) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents. All public notices issued under this subparagraph shall contain the following minimum information:

(I) Name and address of the department;

(II) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(III) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(IV) Name, address and telephone number of an agency contact person for further information, which may include copies of the draft permit, fact sheet, and the application;

(V) A brief description of the comment procedures, the time and place of any hearing that will be held, a statement of procedures for requesting a hearing (unless a hearing has already been scheduled) and any other procedures by which the public may participate in the final permit decision; and

(VI) Any additional information considered necessary or proper by the department.

11. Public comments and requests for public hearings. During the public comment period provided under paragraph (1)(A)10. of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised in the hearing. All comments shall be considered by the department in making the final decision and shall be answered as provided in paragraph (1)(A)17. of this rule.

12. Public hearings.

A. The department will hold a public hearing whenever a written request for a hearing is received within forty-five (45) days of the public notice. Whenever the department issues, reviews every five (5) years or renews an active hazardous waste land disposal facility permit, it shall hold a public hearing.

B. The department may hold a public hearing whenever there is significant public interest in a draft permit(s), whenever one or more issues involved in the permit decision could be clarified or at its discretion.

C. Whenever possible, the department will schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

D. Public notice of the hearing will be given as specified in paragraph (1)(A)10. of this rule.

E. Any person may submit comments or data concerning the draft permit. The department will accept oral comments during the hearing. Reasonable limits may be set on the time allowed for oral comments. Any person who cannot present oral comments due to time limitations will be provided an opportunity to present written comments. The public comment period under paragraph

(1)(A)10. of this rule will automatically be extended to the close of any public hearing if the hearing is held later than forty-five (45) days after the start of the public comment period.

F. A tape recording or written transcript of the hearing shall be made available to the public.

13. Obligation to raise issues and provide information during the public comment period. All persons, including applicants, who believe any condition of a draft permit is inappropriate shall raise all ascertainable issues and submit all available arguments supporting their position by the close of the public comment period under paragraph (1)(A)10. of this rule. Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless they consist of state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials available to the department upon the department's request.

14. *Reserved.*

15. Issuance and effective date of permit.

A. For purposes of this paragraph, a final permit decision means the issuance, denial, modification, total modification, or revocation of a permit. After the close of the public comment period described in paragraph (1)(A)10. of this rule on a draft permit, the department will issue a final permit decision. The department will notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice will include reference to the procedures for appealing a decision. For active land disposal facility permits, the department also will send a news release announcing the final decision to the news media serving the area where the facility is located.

B. A final permit revocation decision will become effective thirty (30) days after the decision. A final permit issuance or denial will become effective on the date the decision is signed by the department.

16. *Reserved.*

17. Response to comments.

A. At the same time that any final permit decision is issued under paragraph (1)(A)15. of this rule, the department will issue a response to comments. This response shall:

(I) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(II) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

B. The response to comments will be available to the public.

18. *Reserved.*

19. *Reserved.*

20. *Reserved.*

(B) This subsection sets forth requirements which correspond to the requirements in 40 CFR part 124 subpart B.

1. Applicable permit procedures.

A. The requirements of this subsection shall apply to all new part B applications. The requirements of this section shall also apply to part B applications for renewal of permits where a significant change in facility operations is proposed. For purposes of this section, a “significant change” is any change that would qualify as a class III permit modification under 40 CFR 270.42, as incorporated in 10 CSR 25-7.270. The requirements of this section do not apply to permit modifications under 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. Prior to submission of an application, proposed disposal facilities shall submit a letter of intent in accordance with section 260.395, RSMo. When a letter of intent submitted under section 260.395, RSMo is received, the department will publish the letter within ten (10) days of receipt. In accordance with section 260.395, RSMo, the letter will be published as specified in section 493.050, RSMo. The letter will be published once a week for four (4) weeks in a newspaper of general circulation serving the county in which the facility is proposed to be located.

C. Prior to the submission of a part B permit application for a facility, the applicant shall hold at least one (1) meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide an opportunity for attendees to voluntarily provide their names and addresses.

D. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subparagraph (1)(B)1.C. of this rule, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application,

in accordance with 40 CFR 270.14(b), as incorporated in 10 CSR 25-7.270.

E. The applicant shall provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant shall maintain, and provide to the department upon request, documentation of the notice.

(I) The applicant shall provide public notice in all of the following forms:

(a) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in part (1)(B)1.E.(II) of this rule, in a newspaper of general circulation in the county or equivalent jurisdiction in the proposed location of the facility. In addition, the applicant shall publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions. The notice shall be published as a display advertisement;

(b) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in part (1)(B)1.E.(II). If the applicant places the sign on the facility property, then the sign shall be large enough to be readable from the nearest point where the public would pass by the site;

(c) A broadcast media announcement. The applicant shall broadcast one (1) notice, fulfilling the requirements in part (1)(B)1.E.(II) of this rule, at least once on at least one (1) local radio station or television station. The applicant may employ another medium with the prior written approval of the department; and

(d) A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the permitting agency and to the units of local government described in subpart (1)(A)10.C.(I)(d) of this rule.

(II) The notices required under part (1)(B)1.E.(I) of this rule shall include:

(a) The date, time, and location of the meeting;

(b) A brief description of the purpose of the meeting;

(c) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(d) A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

(e) The name, address, and telephone number of a contact person for the applicant.

2. Public notice requirements at the application stage.

A. Applicability. The requirements of this section shall apply to all part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to part B applications seeking renewal of permits for such units under 40 CFR 270.51, as incorporated in 10 CSR 25-7.270. The requirements of this section do not apply to permit modifications under 40 CFR 270.42, as incorporated in 10 CSR 25-7.270, or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. Notification at application submital.

(I) The department shall provide public notice as set forth in subpart (1)(A)10.C.(I)(c) of this rule, and notice to the appropriate units of local government as set forth in subpart (1)(A)10.C.(I)(b) of this rule, that a complete part B permit application has been submitted to the agency and is available for review.

(II) The notice will be published within a reasonable period of time after the application is received by the department. The notice must include:

(a) The name and telephone number of the applicant’s contact person;

(b) The name and telephone number of the permitting agency’s office, and a mailing address to which information and inquiries may be directed throughout the permit review process;

(c) An address to which people can write in order to be put on the facility mailing list;

(d) A location where copies of the permit application and any supporting documents can be viewed and copied;

(e) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(f) The date that the application was submitted.

C. Concurrent with the notice required under subparagraph (1)(B)2.B. of this rule, the department will place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency’s office.

3. Information repository.

A. Applicability. The requirements of this section apply to all applicants seeking hazardous waste management permits.

B. The department may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the department will consider a variety of factors, including: the level of public interest; the type of facility; and the presence of an existing repository. If the department determines, at any time after submittal of a permit application, that there is a need for a repository, then the department will notify the facility that it must establish and maintain an information repository.

C. The information repository shall contain all documents, reports, data, and information deemed necessary by the department to fulfill the purposes for which the repository is established. The department will have the discretion to limit the contents of the repository.

D. The information repository shall be located and maintained at a site chosen by the facility. If the department finds the site unsuitable for the purposes and persons for which it was established due to problems with the location, hours of availability, access, or other relevant considerations, the department will specify a more appropriate site.

E. The department will specify requirements for informing the public about the information repository. At a minimum, the department will require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

F. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout the time period specified by the department. The department may close the repository in its discretion, based on the factors in subparagraph (1)(B)3.B. of this rule.

(2) Appeal of Final Decision.

(A) The requirements of this section apply to permit appeals, permit denials, permit revocations or total modifications, closure plan approvals and post-closure plan approvals.

(B) The applicant or any aggrieved person may appeal to the commission a final permit decision, a closure plan approval, a post-closure plan approval or any condition of a final permit, closure plan approval or post-closure plan approval by filing a notice of appeal with the commission within thirty (30) days of the decision. The notice of appeal shall set forth the grounds for the appeal. The appeal shall be limited to issues raised during the public comment period and not resolved in the final permit or approval to the applicant's or aggrieved person's satisfaction. Issues includ-

ed in the notice of appeal outside those raised during the public comment period shall not be considered; however, the commission may consider an appeal of a condition in the final permit that was not part of the draft permit and therefore could not have been commented upon previously.

(C) Any appeal under this section shall be a contested case and shall be conducted under section 260.400, RSMo.

(D) Any party described in subsection (2)(G) of this rule may petition the commission for an interlocutory order staying the effectiveness of a final permit, a closure plan approval, a post-closure plan approval or any condition of a final permit or approval which is subject to an appeal, until the commission enters its final order upon the appeal. The applicant may at any time during the proceeding apply to the commission for relief from a stay order previously issued.

1. In determining whether to grant a stay or relief from a stay, the commission will consider the likelihood that the petition will eventually succeed on the merits, the potential for harm to the applicant, business, industry, public health or the environment if the requested stay or relief is or is not granted and the potential magnitude of the harm.

2. Any decision concerning a petition for a stay or relief from a stay shall not be considered a contested case or a final order and shall be made by a majority of the sitting quorum of the commission.

3. The stay of any permit pending appeal to the commission shall have the effect of continuing the effect and enforceability of any existing permit until the commission issues a final order upon the appeal, unless the stay is lifted sooner by the commission. The stay of any condition of a permit pending appeal to the commission shall not relieve the applicant of complying during the appeal proceeding with all conditions of the permit not stayed.

4. No petition for a stay order or relief from a stay order shall be presented to the commission on less than ten (10) days' notice to all other parties to the proceeding.

(E) A timely appeal stays the effectiveness of a permit revocation. If a timely notice of appeal is not filed, the revocation becomes final thirty (30) days after the revocation decision was made by the department.

(F) Public notice of appeals, including the time and place of the appeal hearing, shall be given in accordance with part (1)(A)10.C.(II) of this rule.

(G) The participants in an appeal hearing shall be:

1. The department;
2. The applicant;

3. Any aggrieved person filing a timely notice of appeal; and

4. Any person who files a timely application for intervention and is granted leave to intervene of right or permissive intervention. Any person desiring to intervene in an appeal shall file with the staff director of the commission, an application to intervene according to the procedures of Rule 52.12, Supreme Court Rules of Civil Procedure.

A. The application to intervene shall state the interests of the applicant and the grounds upon which intervention is sought and also shall contain a statement of the position which the applicant desires to take in the proceeding. The applicant shall serve a copy of the application to intervene on each of the parties to the proceeding as determined under part (1)(A)10.C.(II) of this rule.

B. The commission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The commission or hearing officer may condition any grant of intervention as the circumstances may warrant.

(3) Transporter License.

(A) Issuance or Denial of a Transporter License.

1. Upon receipt of a complete application for a transporter license, the department will determine whether the license conforms to the requirements of sections 260.385 and 260.395, RSMo and 10 CSR 25-6, and serve on the applicant its decision issuing, with or without conditions, or denying the license. If the license is denied, the department will specify the reasons for the denial. No license will be issued until the fees required by section 260.395.1, RSMo have been paid.

2. The procedure for appealing a license, a denial of a license or any condition of a license shall be the same as the procedure for permit appeals under section (2) of this rule.

(B) Revocation of a Transporter License.

1. Transporter licenses may be revoked for the reasons specified in sections 260.379.2, 260.395.3, 260.410.3 and 260.410.4, RSMo, or for failure to comply with sections 260.395.1(2) and 260.395.1(3), RSMo.

2. The department may initiate proceedings to revoke a transporter license. If the department proposes to revoke a transporter license, it will send by certified mail to the licensee a notice of intent to revoke which will specify the provisions of sections 260.350–260.434, RSMo, the provisions of 10 CSR 25-6, the conditions of the license or the provisions of an order issued to the

licensee which the licensee has violated, or the manner in which the licensee misrepresented or failed to fully disclose relevant facts, or the manner in which the activities of the licensee endanger human health or the environment, or are creating a public nuisance.

3. The procedure for appealing a license revocation shall be the same as the procedure for permit revocation under section (2) of this rule. A timely appeal stays the effectiveness of a license revocation. If a timely notice of appeal is not filed, the revocation shall become final thirty (30) days after the revocation decision was made by the department.

(4) Resource Recovery Facility Certifications.

(A) Issuance of Resource Recovery Facility Certifications. Upon receipt of a complete application for resource recovery facility certification, the department will determine whether the application conforms to the requirements of section 260.395.13, RSMo and 10 CSR 25-9.020, and will serve on the applicant its decision issuing, with or without conditions, or denying the certification. If the certification is denied, the department will specify the reasons for the denial. The procedure for appealing a certification, denial of a certification or any condition of a certification will be the same as the procedure for permit appeals under section (2) of this rule.

(B) Modification of Resource Recovery Certifications.

1. The department may modify a resource certification under any of the following circumstances:

A. When required to prevent violations of the requirements of section 260.395.14, RSMo or 10 CSR 25-9.020;

B. When relevant facts have been misrepresented or not fully disclosed;

C. When required to protect the health of humans or the environment or to prevent or abate a public nuisance;

D. When the facility proposes changing any waste stream(s) accepted by the facility;

E. When the facility proposes changing any processes or equipment utilized at the facility; or

F. When the conditions specified in 40 CFR 270.41 and 270.42, as incorporated in 10 CSR 25-7.270, would warrant a permit modification if the activities at the facility were also subject to a permit.

2. If the department proposes to modify the certification it will send by certified mail to the owner/operator (the certificate holder) a notice of intent to modify which will specify the reasons for the proposed modification

and the manner in which the certificate is proposed to be modified.

3. The facility may appeal any modification, except a modification requested by the facility itself. The procedure for appealing a modification shall be the same as the procedure for appeal of a permit condition under section (2) of this rule.

(C) Revocation of Resource Recovery Facility Certifications.

1. The department may initiate proceedings to revoke the certification of a resource recovery facility. If the department revokes the certification of a resource recovery facility, it will send by certified mail to the owner/operator of the affected facility (the certificate holder) a final revocation which will specify the provisions of section 260.395.14, RSMo, the provisions of 10 CSR 25-9.020 or the provisions of an order issued to the owner/operator which have been violated or the manner in which the owner/operator misrepresented or failed to fully disclose relevant facts or the manner in which the activities at the facility endanger human health or the environment or are creating a public nuisance.

2. Resource recovery facility certifications may be revoked for the reasons specified in paragraph (4)(B)1. of this rule.

3. The procedure for appealing a revocation shall be the same as the procedure for appeal of a permit revocation under section (2) of this rule. A timely appeal stays the effectiveness of a revocation. If a timely notice of appeal is not filed, the revocation shall become final thirty (30) days after the revocation decision was made by the department.

(5) Variances.

(A) Applicability. The commission will not consider any petition for variance that would permit the occurrence or continuance of a condition which unreasonably poses a present or potential threat to the health of humans or other living organisms. The department may require any petitioner for a variance to submit mailing lists and mailing labels required to accomplish the public notice requirements of this section.

(B) Evaluation. The department will evaluate any petition for a variance to determine whether the request is substantive or non-substantive based upon the effect of the proposed variance on facility operations, types of waste, type and volume of hazardous waste management units, location of facility, public interest and compliance history. Variances from generator or transporter requirements will be deemed non-substantive provided all

conditions of subsection (3)(A) of this rule are met.

(C) Substantive Variance. If a variance petition is deemed substantive, the department will:

1. Upon receipt:

A. Mail a notice to all record owners of property within one (1) mile of the outer boundaries of the site, the highest elected official of the county and the highest elected official of the city, town or village where the facility is located; and

B. Issue a news release and publish a legal notice in a newspaper of general circulation serving that area.

2. Within sixty (60) days of receipt:

A. Prepare a recommendation as to whether the variance should be granted, granted with conditions, or denied;

B. Submit the recommendation to the commission;

C. Notify the petitioner of the recommendation;

D. Publish a legal notice regarding the recommendation in a newspaper of general circulation serving that area;

E. Mail a notice regarding the recommendation to all record owners of adjoining property, the highest elected official of the county and the highest elected official of the city, town or village where the facility is located; and

3. Request a formal hearing before the commission or a duly appointed hearing officer on the variance and the department's recommendation as provided in section 260.400, RSMo.

(D) Non-Substantive Variance. If a variance is deemed non-substantive, the department will comply with paragraph (5)(C)2. of this rule. The commission will hold a public hearing as provided in section 260.400, RSMo if requested by the petitioner. A request for a hearing may also be made by any aggrieved person if the department's recommendation is to grant the variance or grant the variance with conditions. Any request by the petitioner or aggrieved person for a public hearing shall be made in writing within thirty (30) days of the date that the notice of recommendation is published.

(E) Final Decision. If the commission makes a decision on a variance without a public hearing, the matter will be passed upon by the commission at a public meeting no sooner than thirty (30) days from the date of the recommendation.

(F) Hearing Procedures. Any hearings under this section shall be a contested case pursuant to section 260.400 and Chapter 536, RSMo. The participants shall be the department, the petitioner, any aggrieved person

who requests a hearing and any person who files a timely application for intervention and is granted leave to intervene. Any person desiring to intervene shall file with the staff director of the commission an application within thirty (30) days of the date that the notice of recommendation is published.

1. The application to intervene shall state the interests of the applicant and the grounds upon which intervention is sought and also shall contain a statement of the position that the applicant desires to take in the proceeding. The applicant shall serve a copy of the application to intervene on each of the parties listed in subsection (5)(F) of this rule.

2. The commission or duly appointed hearing officer will grant or deny the application to intervene pursuant to Rule 52.12, Supreme Court Rules of Civil Procedure. The commission or hearing officer may condition any grant of intervention as the circumstances may warrant.

AUTHORITY: sections 260.370, 260.400, 260.405 and 260.437, RSMo 2000. Original rule filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001, effective Oct. 30, 2001.*

**Original authority: 260.370, RSMo 1977, amended 1980, 1988, 1993, 1995; 260.400, RSMo 1977, amended 1980, 1993; 260.405, RSMo 1977, amended 1980; and 260.437, RSMo 1983, amended 1995.*